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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/696,465	10/25/2000	Charles C. Birkner		4034

7590 10/07/2003  
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EXAMINER

VAN DOREN, BETH

ART UNIT PAPER NUMBER

3623

DATE MAILED: 10/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/696,465

Applicant(s)

BIRKNER ET AL.

Examiner

Beth Van Doren

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10/25/2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>2</u> . | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

1. The following is a non-final, first office action on the merits. Claims 1-20 are pending.

#### ***Claim Objections***

2. Claim 12 is objected to because the claim should begin with a capital letter (i.e. "the" should be capitalized) and should end with a single punctuation mark (i.e. the claim ends in two periods and should only have one). Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 11 and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claim 11 recites "wherein the collected information wirelessly using a handheld wireless unit". It is unclear as to what is occurring in this limitation. The limitation has been construed as --wherein the collected information is wirelessly transmitted using a handheld wireless unit-- for examination purposes. Appropriate correction is required.

4. Claim 12 recites the limitation "wherein the information can be transmitted using a modem". It is unclear as to whether the limitations following the phrase "can be" are part of the claimed invention. For examination purposes, the limitation has been construed as --wherein the information is transmitted using a modem--. Clarification is required.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

6. Claims 1-6, 8-12, and 14-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Meridian Project Systems, Inc. ([www.mps.com](http://www.mps.com)).

7. As per claim 1, Meridian Project Systems, Inc. teaches a construction management system, comprising:

A handheld computer adapted to collect construction data from the field (See at least page 1, section 1-4, and page 28, sections 1 and 3, wherein a handheld computer is disclosed that allows construction data to be collected from the field);

A planning system to track budgetary information (See at least page 1, sections 1-2, page 2, section 1, page 3, section 3, page 13, sections 1-3, pages 14-16, page 17, sections 1-3, page 19,

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and page 28, sections 1-3, wherein planning system features are disclosed that track the budget information);

A design system to perform site engineering assessment (See at least page 1, sections 1-4, page 2, section 1, page 3, sections 1-5, page 13, sections 1 and 3, page 15, and page 28, sections 1-3, which includes a system for engineers and engineering site analysis);

A construction system to track material consumption and progress for each project, the construction system adapted to receive data collected from the handheld computer (See at least page 1, sections 1-2, page 2, section 1, page 3, sections 1-5, page 4, page 13, sections 1-3, pages 14-16, page 17, sections 1-3, page 19, and page 28, sections 1-3, which discloses a construction system to track progress and material consumption to generate reports using information from the handheld computer).

8. As per claim 2, Meridian Project Systems, Inc. teaches a system wherein the handheld computer collects work in progress data (See at least page 1, sections 1-2, page 2, section 1, page 3, sections 1-5, and page 4, wherein the handheld computer is used to collect work in progress data).

9. As per claim 3, Meridian Project Systems, Inc. teaches a system wherein the handheld computer collects project and contract identification, inspector identification, item number, location, and one or more description of activities (See page 1, sections 1-4, page 3, sections 1-5, pages 10-12, page 13, page 14, section 1, page 15, sections 5 and 6, and page 16, which includes project and contract identification, item numbers, location, and one or descriptions).

10. As per claim 4, Meridian Project Systems, Inc. discloses a system wherein the handheld computer collects labor related information (See page 1, section 1-4, page 2, page 3, section 1,

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pages 11-12, page 13, page 15, section 6, page 16, section 1, and page 28, sections 1-3, wherein the handheld computer collects information including labor information).

11. As per claim 5, Meridian Project Systems, Inc. discloses a system wherein the handheld computer collects labor type, quantity, and hours (See page 1, section 1-4, page 2, page 3, section 1, page 12, page 13, page 15, section 6, page 16, section 1, and page 28, sections 1-3, wherein the handheld computer collects labor type, quantity, and hours).

12. As per claim 6, Meridian Project Systems, Inc. teaches a system wherein the handheld computer collects equipment information (See page 1, sections 1-4, page 3, section 2, page 13, page 15, section 5, and page 28, sections 1-3, which discloses equipment information being collected via the handheld computer).

13. As per claim 8, Meridian Project Systems, Inc. teaches a system wherein the handheld computer collects submittal information (See at least page 1, sections 1-2, page 2, section 1, page 3, sections 1-5, page 4, page 13, page 15, and page 28, sections 1-3, which disclose the handheld computer collecting submittal information).

14. As per claim 9, Meridian Project Systems, Inc. teaches a system wherein the handheld computer collects weather condition, comments, and an inspector name (See page 1, section 2, page 3, sections 1-5, pages 10-12, page 13, section 3, page 16, section 2, and page 28, sections 1-3, wherein the handheld computer collects weather condition, comments, and an inspector name).

15. As per claim 10, Meridian Project Systems, Inc. discloses a system wherein the handheld computer sends collected information to a server (See page 1, sections 1-4, pages 5-6, page 8,

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section 1, pages 19-20, and page 28, sections 1-3, wherein the handheld computer uploads and downloads information to a server).

16. As per claim 11, Meridian Project Systems, Inc. teaches a system wherein the collected information is wirelessly transmitted using a handheld wireless unit (See page 1, sections 1-4, pages 5-6, page 8, section 1, pages 19-20, and page 28, sections 1-3, wherein the collected information is wirelessly transmitted. Page 8, section 1, discloses a technical requirement of the handheld unit as ActiveSync 3.0, which allows for wireless data transmissions).

17. As per claim 12, Meridian Project Systems, Inc. teaches a system further comprising a modem coupled to the handheld computer, wherein the information can be transmitted using a modem (See page 1, sections 1-4, pages 5-6, page 8, section 1, pages 19-20, and page 28, sections 1-3, wherein the collected information is wirelessly transmitted. Page 8, section 1, discloses a technical requirement of the handheld unit as ActiveSync 3.0, which allows for transmissions using a modem).

18. As per claims 14, 15, 16, 17, and 18, claims 14, 15, 16, 17, and 18 are method version of claims 1, 2, 4, 9, and 11, respectively, and are therefore rejected using the same art and rationale as the rejections of claims 1, 2, 4, 9, and 11, respectively.

19. As per claim 19, Meridian Project Systems, Inc. teaches a method wherein the handheld computer collects project and contract identification, inspector identification, item number, location, one or more description of activities, labor type, quantity, hours, weather condition, comments, and an inspector name (See page 1, sections 1-4, page 3, sections 1-5, pages 10-12, page 13, page 14, section 1, page 15, sections 5 and 6, and page 16, which includes project and contract identification, item numbers, location, and one or descriptions. See page 1, section 2,

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page 3, sections 1-5, pages 10-12, page 13, section 3, page 16, section 2, and page 28, sections 1-3, wherein the handheld computer collects weather condition, comments, and an inspector name).

20. As per claim 20, Meridian Project Systems, Inc. teaches a method further comprising sending collected information to a server over a land-line or wireless medium (See page 1, sections 1-4, pages 5-6, page 8, section 1, pages 19-20, and page 28, sections 1-3, wherein the collected information is wirelessly transmitted. Page 8, section 1, discloses a technical requirement of the handheld unit as ActiveSync 3.0, which allows for wireless data transmissions).

***Claim Rejections - 35 USC § 103***

21. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meridian Project Systems, Inc. ([www.mps.com](http://www.mps.com)).

22. As per claim 7, Meridian Project Systems, Inc. discloses a system wherein the handheld computer collects equipment information, including summary information by company (See at least page 1, sections 1-4, page 3, section 2, page 11, and page 15, section 5, wherein the handheld computer collects equipment type).

However, Meridian Project Systems, Inc., does not expressly disclose that this information includes type, quantity, hours in use and stand-by hours.



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Meridian Project Systems, Inc. discloses collecting and reporting information about equipment used in a construction project. Type, quantity, hours in use and stand-by hours are all known equipment information items in the art. It would have been obvious to one of ordinary skill in the art at the time of the invention to include type, quantity, hours in use and stand-by hours in the information collected about the equipment of the project in order to increase the accuracy and the detail of the information collected and stored in the system. Page 1, section 2, discusses the importance of accurate and detailed information.

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23. As per claim 13, Meridian Project Systems, Inc. discloses a system further comprising a cradle coupleable to the handheld computer, the cradle gathering the collected information for transmission to a server (See page 1, sections 1-4, pages 5-6, page 8, section 1, pages 19-20, and page 28, sections 1-3, wherein the collected information is wirelessly transmitted. Page 8, section 1, discloses a technical requirement of the handheld unit as ActiveSync 3.0, which allows for coupling for transmission).

However, Meridian Project Systems, Inc. does not expressly disclose a hot-sync cradle.

Meridian Project Systems, Inc. discloses that the handheld computer couples with another computer to download and upload collected data. HotSync is known in the art and is the registered trade name for a method of linking between a handheld computer and a more substantial computer. It would have been obvious to one of ordinary skill in the art at the time of the invention to use HotSync to transmit the information in order to more efficiently transfer information, as discussed on page 1, section 2.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Jalla (U.S. 6,445,968) teaches a task manager usable with construction.

Hughes et al. (U.S. 5,893,074) discloses a task manager usable with construction.

Pickens (U.S. 6,345,258) discloses an information system for building homes.

Casto (U.S. 6,038,547) teaches a construction system that coordinates construction projects involving contractors and subcontractors.

Elliot (U.S. 6,446,053) discloses a computer system for producing the proposal and model for a construction project.

“ActiveSync 3.0: Microsoft Makes Synchronization Windows CE Faster and Easier”  
([www.microsoft.com](http://www.microsoft.com)) discloses aspects of ActiveSync.

Construction Data Control, Inc. ([cdci.com](http://cdci.com)) teaches an automated tool for managing a construction project.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Beth Van Doren whose telephone number is (703) 305-3882. The examiner can normally be reached on M-F, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (703) 305-9643. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

*bvd*  
bvd

September 29, 2003

*Susanna Diaz*  
*Susanna Diaz,*  
*Primary Examiner*  
*A.U. 3623*